

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

UNITED STATES OF AMERICA,

v.

GARY DON KIRKLAND

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§ **CASE NUMBER 6:12-CR-00082-015-RC**
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**REPORT & RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

On November 7, 2017, the Court conducted a hearing to consider the government's petition to revoke the supervised release of Defendant Gary Don Kirkland. The government was represented by Jim Noble, Assistant United States Attorney for the Eastern District of Texas, and Defendant was represented by Jim Huggler.

Defendant originally pled guilty to the offense of Conspiracy to Possess with Intent to Distribute at Least 50 Grams but less than 200 Grams of Methamphetamine, a Class B felony. The offense carried a statutory maximum imprisonment term of 40 years. The United States Sentencing Guideline range, based on a total offense level of 23 and a criminal history category of V, was 84 to 105 months. On October 21, 2008, District Judge Leonard Davis sentenced Defendant to 105 months imprisonment followed by 5 years of supervised release subject to the standard conditions of release, plus special conditions to include financial disclosure, drug testing and treatment, mental health treatment, and a \$100 special assessment (paid). On September 3, 2015, Defendant completed his period of imprisonment and began service of the supervision term.

Under the terms of supervised release, Defendant was required to refrain from use of controlled substances. In its petition, the government alleges that Defendant violated his conditions of supervised release when he tested positive for the use of methamphetamine and amphetamine on or about April 7, 2017; on May 15, 2017; and on May 22, 2017.

If the Court finds by a preponderance of the evidence that Defendant violated the conditions of supervised release when he tested positive for the use of methamphetamine and amphetamine on or about April 7, 2017; May 15, 2017; and May 22, 2017, Defendant will have committed a Grade C violation. U.S.S.G. § 7B1.1(a). Upon a finding of a Grade C violation, the Court may (A) revoke supervised release; or (B) extend the term of probation or supervised release and/or modify the conditions of supervision. U.S.S.G. § 7B1.3(a)(2). Considering Defendant's criminal history category of V, the Guideline imprisonment range for a Grade C violation is 7 to 13 months. U.S.S.G. § 7B1.4(a).

At the hearing, the parties indicated that they had come to an agreement to resolve the petition whereby Defendant would plead true to violating the conditions of supervision by committing the acts as alleged in the government's petition. In exchange, the government agreed to recommend to the Court a sentence of 10 months imprisonment with 2 years supervised release to follow. The government further agreed to not oppose a motion for early termination of supervised release should Defendant successfully finish the first year of his supervised release term.

Pursuant to the Sentencing Reform Act of 1984, the Court **RECOMMENDS** that Defendant Garry Don Kirkland be committed to the custody of the Bureau of Prisons for a term of imprisonment of 10 months with credit for time served from August 11, 2017 with 2 years supervised release to follow.

So ORDERED and SIGNED this 7th day of November, 2017.


JOHN D. LOVE
UNITED STATES MAGISTRATE JUDGE